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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

MICHAEL THORNHILL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

EVERETT MCCRARY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals sanction such a departure by the District Court from the accepted and usual course of judicial proceedings in denial of petitioners' Fifth Amendment due process right to fundamental fairness and their Sixth Amendment right to confrontation of witnesses as to call for an exercise of the Supreme Court's supervisory power to correct verdicts and sentences of incarceration which the District Court caused to be untrustworthy and in violation of the clear wording of federal statutes ?

2. Did the Court of Appeals condone rulings of the District Court on an important federal Fourth Amendment question in a way that conflicts with the relevant and controlling decisions of this Court ?

PARTIES AND DISCLOSURE STATEMENT

The parties to the proceeding in the Court of Appeals whose judgments are sought to be reviewed are contained in the caption. There is no corporation involved.

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OPINIONS AND ORDERS BELOW

The only published opinion and order in the case is the order denying petitioners' motions to suppress evidence illegally seized, and other defendants' motions, which is published as *United States v. Thornhill, 20 F. Supp. 2d 1377 (1998).* (App. 3)

JURISDICTION

On June 2, 2000, a panel of the United States Court of Appeals for the Eleventh Circuit affirmed the judgments of the United States District Court for the Middle District of

Georgia without opinion. (App. 1.) On August 25, 2000, the said Court of Appeals denied petitions of petitioners for rehearing and suggestions of rehearing en banc, without opinion. (App. 22.)

28 U.S.C. 1254 (1) confers on this Court jurisdiction to review on a writ of certiorari the above mentioned judgments by the United States Court of Appeals for the Eleventh Circuit.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution

Amendment Four (App. 24.)

Amendment Five (App. 24.)

Amendment Six (App. 24.)

Statutes

Federal

18 U.S.C. 1956 (App. 25.)

18 U.S.C. 1957 (App. 34.)

Georgia

O.C.G.A. 42-8-62 (App. 37.)

O.C.G.A. 42-8-65 (App. 39.)

STATEMENT OF THE CASE

Michael Thornhill and Everett McCrary were indicted on April 30, 1998 (R-1-1), along with four others. After various immunity deals Thornhill, McCrary and Greg Starr, the latter of whom is not involved in this petition, proceeded to trial under a Second indictment. (R-7-199)

Count 1 was a charge of conspiracy to commit fraud. Counts 2 through 43 were charges of medicaid fraud on the Georgia Department of Medical Assistance (GDMA) for alleged overbilling by Georgia Disability Transportation

Services (GDTS) for non-emergency transportation (NET) trips made in transportation of ten medicaid patients to facilities in the Macon, Bibb County, Georgia area.

McCrary was the incorporator, sole stockholder, director, president, and agent for service for GDTS. (R-11-203-137) Thornhill was neither a stockholder, director, officer nor employee of GDTS. (R-11-203-83, 137) When Lamonica, his former wife, asked him if McCrary would need someone to do billing he told her: "I don't know, you can talk with him." (R-9-201-97) Thornhill never exercised any direction about the operation of GDTS. (R-11-203-67 to 68) Lamonica, the manager of billing testified that Thornhill never gave instructions or consultation about billing, or exercised supervisory duties for GDTS. (R-9-201-146) Thornhill never went with her to a training session or seminar. She never saw a check signed by him in behalf of GDTS. (R-9-201-147) FBI Agent McClendon testified that he spoke with Thornhill at the time of the execution of search warrants on February 7, 1995, and Thornhill told the agent that he had no affiliation whatsoever with GDTS. (R-7-1-199-96) (R-12-204-86)

McCrary tried to get employees to comply with the impossible trip sheet system. (McCrary Exhibit H) (R-2-150) (R-9-201-59, 139, 140) He trusted the office managers to manage the offices (R-8-200-116), and delegated the details to them to follow the rules and regulations. (R-11-203-142, 143)

McCrary did not supervise the billing clerks. (R-12-204-7) He entrusted Lamonica totally with the billing. (R-11-203-143, 144) (R-12-204-6) (R-9-201-144)

McCrary devoted his attention to "big picture items" of setting up offices. (R-12-204-6), going to different offices, traveling, running routes, general management issues, investigation of accidents, insurance problems, formulating policy, marketing, resolving problems with creditors, arranging office leases of the various locations, overseeing administrative responsibilities of payroll, and commuting to

his home in Tennessee on weekends where his wife was still in nursing school. (R-11-203-146, 147)

Thornhill and McCrary testified that checks written by Thornhill to GDTS were loans. (R-11-203-76 to 82, 89, 138-141) They testified that checks written from GDTS to Thornhill were payments on leases for vans that were leased to and used by GDTS, repayments of loans and payments to Thornhill for payments to his subcontractors who transported private and insurance covered patients for Thornhill and whom GDTS also began to use. (R-11-203-76 to 82, 141) There was no evidence of any conspiratorial conversation between Thornhill and McCrary or by anyone else. The Government contended that all of these transactions were evidence of conspiracy and fraud.

Each alleged fraud count of the indictment was an allegation of billing by GDTS for a distance for the transportation of a certain patient on a certain day to a certain facility which was allegedly greater than the distance actually traveled, when measured directly from the residence of the patient to the certain facility. There was no question that the trips were made but the allegations were that the billing for the trips was for greater mileage than the patients were transported. The total amount of payments to GDTS for the transportation of these patients, including the part of the payment that was admittedly owed and the part that was allegedly excessive, totaled $2,269.55, according to the Indictment. (R-1-1)

In fact, most patients rode together in the same group on a regular basis. Except for wheelchair vans which could carry two wheelchairs and up to six patients, minivans carried up to fifteen people to the same facility on the usual trips. (R-11-203-193, 200) (R-8-200-189, 190) Occasionally a driver would take a patient directly from home to a facility but the typical procedure was that the drivers would pick up all patients going to a particular facility and deliver them all at one time, rather than taking each directly to the facility. (R-11-203-151 to 153) (R-8-200-190)

Counts 44 to 52 were allegations of money laundering of sums of money with each allegedly being greater than $10,000 of criminally derived funds. Count 53 was a forfeiture count based upon the previous counts. (R-2-136, 137)

COURSE OF PROCEEDINGS AND DISPOSITIONS IN THE DISTRICT COURT

Pleas off "not guilty" were entered by Thornhill (R-1-13) and McCrary (R-1-16). Motions to suppress evidence illegally seized were filed by Thornhill (R-1-85, 102, 103), and McCrary. (R-1-86, 105,106) The District Court denied all motions to suppress. (App. 3.) (R-1-118) Thornhill and McCrary were convicted on Counts 1-43 (R-2-168, 169), and Counts 44-53. (R2-171, 173, 174) Motions for judgments of acquittal were filed by Thornhill (R2-183) and by McCrary (R-2-184) All motions were denied by the District Court (R-2-198) Motions were filed for release, pending appeal, by Thornhill (R-2-211), and by McCrary. (R-2-210) Sentences were imposed on Thornhill (R-2-222), (App. 7.) and on McCrary. (R-2-221) (App. 14.) Motions for release, pending appeal, were denied by the District Court (R-14-226-30), and by the Court of Appeals.. Mr. Thornhill and Mr. McCrary are incarcerated.

STATEMENT OF JURISDICTION

The jurisdiction for the prosecution of an alleged federal offense is in the district and division in which the offense was allegedly committed. 18 U.S.C. 3232, Rule 18 Federal Rules of Criminal Procedure. The United States District Court for the Middle District of Georgia, Macon Division has jurisdiction over Bibb County, Georgia. 28 U.S.C. 90.

The United States Courts of Appeals have jurisdiction of appeals from all decisions of the District Courts of the United States. 28 U.S.C. 1291

Appeals shall be taken from United States District Courts to the Court of Appeals for the circuit embracing the district. 28 U.S.C. 1294

The United States Court of Appeals for the Eleventh Circuit embraces the District Courts of the State of Georgia.. 28 U.S.C. 41

The appeal was from a final decision of the United States District Court for the Middle District of Georgia.

ARGUMENT

I. FIFTH AND SIXTH AMENDMENT ERRORS CALLING FOR THE EXERCISE OF SUPREME COURT'S SUPERVISORY POWER

The United States Court of Appeals for the Eleventh Circuit has sanctioned such a departure by the District Court from the accepted and usual course of judicial proceedings in denial of petitioners' Fifth Amendment due process right to fundamental fairness and their Sixth Amendment right to confrontation of witnesses (App. 24) as to call for an exercise of the Supreme Court's supervisory power.

It would be difficult to find a case in the annals of the federal judiciary where citizens have been incarcerated on the basis of so much mere suspicion, innuendo and conjecture rather than probative evidence beyond a reasonable doubt as required by *In re Winship*, 397 U.S. 358; 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970) and *Jackson v. Virginia*, 443 U.S. 307; 99 S.Ct. 2781; 61 L.Ed. 2d 560 (1979). Petitioners contend that the government's case survived only because of the prejudicial pattern of erroneous and unfair sua sponte interjections, prohibitions, rulings, advice to the prosecutors and argumentative instructions to the jury by the District Court. This series of erroneous rulings by the District Court was such an abuse of discretion that it necessarily prejudiced the Jury's perception of the circumstantial evidence, suspicion, innuendo and conjecture upon which this case was based to such a degree that the Jury's verdicts are

untrustworthy. These errors have been condoned by the Court of Appeals without giving account for its reasoning.

A. THE COURT OF APPEALS SANCTIONED THE DISTRICT COURT'S DESTRUCTION OF THE JURY'S FREEDOM TO RETURN ITS OWN VERDICTS

It is a venerable principle recognized by this Court that ". . . proper guidance by a trial court leaves the jury free to exercise its untrammeled judgment upon the worth and weight of the testimony, and nothing is done to impair its freedom to bring in its verdict and not someone elses's . . ." *U.S. v. Johnson*, 319 U.S. 503, 519; 63 S.Ct. 1233, 1241; 87 L.. Ed. 1546 (1943).

The Court of Appeals condoned the District Court's destruction of the Jury's freedom to return its own verdicts untrammeled and unimpaired by the imposition of the District Court's views.

The District Court erred in allowing into evidence, over objection, evidence of a prior first offender disposition in Fulton Superior Court regarding Thornhill; in prohibiting counsel from eliciting testimonial explanation of the said disposition which was in evidence ; in prohibiting argument to the jury regarding the said evidence, which was in the record, about the disposition; in erroneously instructing the Jury; and in refusing counsel's request to correct the erroneous charge.

The Government gave notice of intent to use evidence of the prior disposition. (R-1-110) The prior case did not involve overbilling for excessive mileage, the essence of the charges in the instant case, but involved a miscategorization of modes of transportation by billing personnel who worked for Thornhill in his prior business. Since he was the owner of the company he assumed responsibility, entered a plea under the Georgia First Offender Act, (O.C.G.A. 42-8-62, 65) (App. 37, 39) paid restitution and was exonerated under the Georgia Law. (R-11-203-42 to 48, 89)

Counsel had continuing objections to the admissibility of this evidence, at a pretrial conference (R-3-116-41, 42), and at the beginning of the trial, where the Court deferred the ruling and instructed that no comment be made by either side regarding the issue until it had ruled. (R-7-199-8 to 10) The District Court allowed the U.S. Attorney to question Jackie Lloyd regarding the matter, over objection (R-10-202-16, 17), and allowed into evidence Government Exhibit 52, a certified copy of the first offender disposition, over counsel's renewal of his prior objections. (R-11-203-23)

The District Court intervened and prohibited counsel from eliciting any testimony regarding the exoneration of Thornhill under the Georgia First Offender Act (App. 37, 39) by cross examination of Agent Pitts (R-11-203-29, 30) and the direct examination of Thornhill. (R-11-203-47)

During argument counsel sought to discuss with the Jury the contents of Government's Exhibit 52, which was in the evidence and which contains verbatim the directive from O.C.G.A. 42-8-62(a) (App. 37, 39) which provides exoneration. The Court abruptly intervened and prohibited further discussion about the contents of that exhibit. (R-12-204-160, 161)

In the Court's charge to the Jury, the Court spoke with what the Jury very well could have interpreted as being disdain regarding the Georgia First Offender Act (App. 37, 39) and the exoneration provided thereunder. (R-13-205-2, 3) The Court then clearly and erroneously mislead the Jury as to the meaning of the Georgia First Offender Act (App. 37, 39) by telling the Jury that the Act also authorized the admission of the evidence. The Court erroneously explained O.C.G.A. 42-8-65(a). The Court told the Jury that subsection "(a)" meant that, under the Georgia Law the evidence of the prior disposition was admissible. The case of *Queen v. The State,* 182 Ga. App. 794, 795; 357 S.E. 2d 150 (1987) held that an explanation, such as the District Court made, is an incorrect statement of the present Georgia Law because of changes made in 1985.

At the conclusion of the District Court's charge, counsel took exception to the above charge on the basis that it denied his clients fundamental fairness guaranteed by the Fifth Amendment procedural due process clause. (App. 24.) (R-13-205-17, 18) In addition, counsel requested the Court again to charge the Jury Thornhill's "Request No. 1" (R-1-133) as a proper statement of the application of the Georgia First Offender Act. (App. 37, 39.) (R-13-205-18), which the Court had requested at a pre-trial conference. (R-4-127-56, 57) The District Court refused to correct its charge. (R-13-205-18)

The above series of rulings by the District Court violated the right of petitioners to the fundamental fairness of due process of law guaranteed by the Fifth Amendment of the United States Constitution (App. 24) and were an abuse of discretion and misapplication of the pertinent rules of law for four reasons. First, as is illustrated by the statement of facts, this case was strictly a circumstantial case. A fair minded and reasonable jury could have construed the totality of the conduct of the parties as consistent with innocence. Petitioners urge that the properly admissible evidence was not sufficient to support the theory of guilt beyond a reasonable doubt. The admission of the evidence of Thornhill's prior First Offender disposition was not really evidence similar to the circumstances of the instant case except for the fact that it related to Medicaid. The prejudicial effect poisoned the entire atmosphere of the instant case and was in flagrant violation of Federal Rule of Evidence 403, in that any legitimate probative value was substantially outweighed by the unfair prejudice. Second, the Court seriously tilted the scales against fundamental fairness by speaking with what appeared to be disdain for the Georgia First Offender Act (App. 37, 39) and its precious exoneration benefits. Third, the District Court further aggravated the errors by absolutely misconstruing and erroneously applying the Georgia Law. Fourth, the Court's abrupt and forceful objections, interventions and prohibitions, sua sponte, imposed upon the Jury the Court's own opinions with the great weight of its authority and trammeled the Jury's freedom to return its own verdicts.

The Court prohibited counsel in voir dire from questioning any juror about the following subjects: Any role model who had inspired the jurors, what the juror considered to be his or her most important talents; how trustworthy the juror considered the Federal Government to be. (R-7-199-1 to 8) The Court denied counsel's request for the application of the Rule of Sequestration under Federal Rule of Evidence 615 in regard to the Government Agents and the Court allowed both Agents McClendon and Wood to remain in the courtroom without a showing that the presence of either was essential to the presentation of the Government's case, as required by Federal Rule of Evidence 615(3). (R-7-199-22, 54)

On the cross examination of the first Government witness, Agent McClendon, who was the chief investigator, counsel sought to develop from the witness testimony which was intended to expose the lack of credibility of the entire investigation and to illustrate the fact that the investigation had been in progress from 1991 and yet the whole case was laid upon a false premise about how mileage was traveled. The Court continued to object, intervene, and prohibit this line of cross examination on the ground that the credibility element of the scope of cross examination under the Federal Rule of Evidence 611(b) did not allow it. (R-7-199-97, 98, 103, 104, 106 to 109)

Over counsel's objection and motion to strike, the Court allowed witness Barbara Tuggle Boulware to testify to prejudicial inadmissible opinion in the nature of a speculated guess about ownership allegedly by Thornhill of GDTS because of what she "felt". (R-8-200-105, 106) The Court objected, intervened and prohibited pursuit of cross examination by counsel of Boulware regarding the details of how the Government Agents intimidated her into being a witness. (R-8-200-120, 121) The Court objected, intervened and prohibited cross examination of the same witness regarding her understanding of the meaning to her of the

immunity agreement (R-8-200-124, 125) which was in evidence.

By the District Court prohibiting all inquiry into credibility flaws which infected the very essence of the Government's case, it violated the rights of petitioners under the Sixth Amendment Confrontation Clause. (App. 24.) See *Delaware v. Van Arsdall,* 475 U.S. 673; 106 S.Ct. 1431;89L.Ed.2d 674 (1986).

The Court admitted Government's Exhibit 50 (R-8-200-54) which was identified by witness Miller of GDMA as a document which he had produced seeking to reflect a sample of trip sheets for which GDTS allegedly billed GDMA. (R-8-200-49, 50) The exhibit was compiled by Miller from three sources, namely, EDS records reflecting billings from GDTS, trip sheets seized from GDTS and the measurements of mileage given to him by FBI Agent McClendon. Counsel objected to the admission of the exhibit on the ground that it was based upon inadmissible hearsay and not having been properly authenticated as a business record under Federal Rule of Evidence 803(6) because it was not a record kept in the usual course of business (R-8-200-52) and because it contained multiple elements of inadmissible hearsay in violation of Federal Rule of Evidence 802. (R-8-200-55) It had already been demonstrated that the measurement of mileage by the agents of the distances over which they thought that the patients had been transported was completely in error. (R-7-199-98, 99) (R-11-203-151 to 153) (R-8-200-190)

The Court prevented an offer of evidence of the volume of employees whom McCrary had to supervise which was offered as relevant in showing how his time was occupied and distracted from billing. (R-11-203-166, 167)

In allowing into evidence McCrary Exhibits: "D-1" and "D-2", demonstrating the volume of business of GDTS the Court argued to the Jury that their credibility was questionable. (R-11-203-158 to 160) The Court prohibited

critical direct testimony of McCrary regarding his notes of distances which were seized by agents and which disappeared. (R-11-203-154, 155) The Court prohibited testimony regarding the disorganized condition of the seized property at the times when Thornhill, McCrary and their counsel examined the seized property at the Macon FBI office (R-11-203-154, 155) and were unable to find pertinent documents which had been seized.

The Court instructed the U.S. Attorney as to how to improve the line of questioning of witness, January. (R-10-202-189) The Court prohibited the cross examination of witness Hill, regarding the trouble that drivers had in getting trip sheets signed, even though of the essence of the Government's case was the allegation that trip sheets were not properly executed. (R-9-201-11, 12) The Court, again instructed the U.S. Attorney how the Court thought the case ought to be proved. (R-9-201-149, 152, 156)

As counsel was seeking to clarify on cross examination the operation of the incubator office in order to show that mere physical presence of people did not prove that they were in a conspiracy, the Court objected, intervened and prohibited the examination. (R-10-202-127)

The Court admitted, over objection of irrelevancy and immateriality, Government's Exhibit 167 which was an eight year old memorandum which had been prepared by Venus Ponder when she worked for Thornhill's prior company, Thornhill Convalescent Transportation Service (TCTS), explaining the necessity of trip sheets being fully filled in and which when last seen by Ponder and Thornhill and given to Jackie Lloyd, nothing was whited out, but which when the document reappeared in the Government's possession eight years later, mileage was whited out (R-10-202-75 to 77) (R-10-202-131 to 133)

The Court decided to charge the Jury that if it found guilt beyond a reasonable doubt that it had a "duty" to convict and

denied counsel's request that the Court use the word "authorize". (R-12-204-89)

In the charge to the Jury, the Court charged that there had been arguments on both sides about the manner in which patients were picked up but that that was not an issue in the case, when in fact, the evidence showed that the order of pickup was critically relevant because the billings and charges of overbilling were based upon the distances over which the patients were transported and the order of pickup directly affected the distance that each patient traveled in circuits, unlike the Government had erroneously assumed, from their residences to the facilities. (R-13-205-3, 4) Counsel for Thornhill and McCrary excepted to this charge. (R-13-205-18)

B. THE COURTS BELOW IGNORED THE CLEAR REQUIREMENTS OF THE FEDERAL MONEY LAUNDERING STATUTE

Even if the Jury's verdicts on the alleged fraud Counts (1-43) had been trustworthy and even if a conspiracy had been proved, there was no basis for the money laundering Counts (44-52) or the forfeiture Count (53) to go to the Jury.

Thornhill and McCrary were charged under Counts 44-52 with financial transactions where each of which allegedly involved criminally derived property of a value greater than ten thousand ($10.000.00) dollars from specified unlawful activity. Count 53, the forfeiture count, was premised on the assumption that Counts 44-52 were proved.

The Court of Appeals' own precedent has made it clear that to prove a money laundering charge under 18 U.S.C. 1956 (App. 25) or 1957, (App. 34) it is imperative to prove that in any such financial transaction, at least ten thousand ($10.000.00) dollars worth of it be derived from the criminal activity. *U.S. v. Adams,* 74 F.3d 1093 (52) (11th Cir. 1996). The evidence, as shown in the statement of the case, when construed in favor of the verdicts on Counts 1-43, failed to prove that there was ever ten thousand (10,000.00) dollars of

criminally derived funds, all totaled. Even though the verdicts are untrustworthy because of the District Court's Fifth and Sixth Amendment violations and even if the evidence is construed most favorably in support of the verdicts, the amount of criminally derived funds would have been less than two thousand ($2,000.00) dollars.

Counsel for Thornhill and McCrary moved for judgments of acquittal which were denied (R-13-205-48), during a long colloquy regarding the legal criteria for money laundering. (R-13-205-44 to 60) In the court's charge, the court told the Jury that the unlawful activity was what the jury had just determined (regarding Counts 1-43) (R-13-205-125, 126) (Apparently less than $2,000.00) After the verdict on counts 44-53, counsel of Thornhill and McCrary again moved for judgments of acquittal in open court and the court declined to rule at that time and invited a formal motion. (R-13-205-136) Motions were filed for judgments of acquittal for Thornhill (R-2-183), and for McCrary. (R-2-185) They were denied. (R-2-198)

C. THE ALLEGED CONSPIRACY AND FRAUD COUNTS WERE NOT PROVED BEYOND A REASONABLE DOUBT BECAUSE THE CASE WAS BASED UPON A FALSE PREMISE

As set forth in the Statement of the Case, the indictment and the Government's evidence were based upon the false assumption that the billing for the transportation of each patient was for a greater distance than the distance from the residence of each patient to the facility.

Only upon the cross examination by the defendants' counsel did the Government learn that the usual procedure was for a van to pick up as many as 15 people on a circuit and to deliver all of them at once to the facility. (R-11-203-193, 200) (R-8-200-189, 190)

The District Court's argumentative instruction to the Jury, that the order of pickup was not an issue, had the effect of diverting the Jury from consideration of this fatal flaw in

the Government's case. (R-13-205-3, 4) Counsel excepted to this charge. (R-13-205-18)

Therefore, the minimum standard of proof required by In re *Winship, supra,* and *Jackson v. Virginia, supra,* was not met.

II. THE COURTS BELOW CONDONED SEARCHES OF FIVE OFFICES IN VIOLATION OF THE FOURTH AMENDMENT BECAUSE THE BASIS WAS A CONCLUSORY AND MISLEADING AFFIDAVIT

A. MOTION TO SUPPRESS

Petitioners filed motions to suppress all evidence seized, for Thornhill (R-1-85), amendment (R-1-103), reply to Government's response (R-1-102), and for McCrary. (R-1-86, 105, 106) The District Court denied all motions to suppress. (R-1-118) (App. 3)

B. DEFICIENCY OF PROBABLE CAUSE

As set forth in detail in the motions, all search warrants were based upon one affidavit of F.B.I. Agent McClendon which was totally defective for probable cause purposes under the Fourth Amendment (App. 24) of the United States Constitution for the reason that, though verbose, it was fatally infected with mere conclusions, bald assertions, speculations, sinister interpretations of innocent conduct, reckless disregard for accuracy and absence of a factual basis for the reliability of sources.

The defective affidavit resulted in the issuance of the warrants arbitrarily. The affidavit totally failed to provide the magistrate with substantial and credible facts within the officer's knowledge or of which he had reasonably trustworthy information which would cause a prudent person to believe, under the circumstances shown, that probable cause existed.

Though the Supreme Court decisions have evolved from the "Two Pronged Aguilar-Spinelli Test", to the "Totality of the Circumstances Gates Test", the Supreme Court has consistently and steadfastly insisted that evidence presented to a magistrate for a search warrant should be based on credible facts and not conclusions.

In the case of *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the U.S. Supreme court, in its opinion written by then Justice Rehnquist, reemphasized the necessity of probable cause being based upon credible facts and not conclusions:

> Our earlier cases illustrated the limits beyond which a magistrate may not venture in issuing a warrant. A sworn statement of an affiant that "he has cause to suspect and does believe" that liquor illegally brought into the United States is located on certain premises will not do. *Nathanson v. United States*, 290 U.S. 41 (1933). An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause, and the wholly conclusory statement at issue in *Nathanson* failed to meet this requirement. An officer's statement that "[a]ffiants have received reliable information from a credible person and do believe" that heroin is stored in a home, is likewise inadequate. *Aguilar v. Texas*, 378 U.S.108 (1964). As in *Nathanson*, this is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others. In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued. . . (Emphasis Supplied)

Again, the U.S. Supreme Court reiterated this necessity of a substantial non-conclusory factual basis for probable cause in the case of *U.S. v. Leon*,468 U.S. 897, 914, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984):

> Deference to the magistrate, however, is not boundless. It is clear, first, that the deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based. *Franks v. Delaware*, 438 U.S. 154 (1978). [fn12] Second, the courts must also insist that the magistrate purport to "perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police." *Aguilar v. Texas, supra*, at 111. See *Illinois v. Gates, supra*, at 239. A magistrate failing to "manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application" and who acts instead as "an adjunct law enforcement officer" cannot provide valid authorization for an otherwise unconstitutional search. *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 326-327 (1979). Page 915.
>
> Third, reviewing courts will not defer to a warrant based on an affidavit that does not "provide the magistrate with a substantial basis for determining the existence of probable cause." *Illinois v. Gates*, 462 U.S., at 239. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Ibid.* See *Aguilar v. Texas, supra*, at 114-115; *Giordenello v. United States*, 357 U.S. 480 (1958); *Nathanson v. United States*, 290 U.S. 41 (1933). [fn13] Even if the warrant application was supported by more than a "bare bones" affidavit, a reviewing court may properly conclude that,

> notwithstanding the deference that magistrate's deserve, the warrant was invalid because the magistrate's probable -cause determination reflected an improper analysis of the totality of the circumstances, *Illinois v. Gates, supra,* at 238-239, or because the form of the warrant was improper in some respect. (PP 914-915) (Emphasis Supplied)

C. SPECIFIC FATAL DEFICIENCIES OF AFFIDAVIT

The affidavit in question, upon which the five search warrants were issued which produced the massive quantity of personal property which the Government contends supports the indictment, is woefully inadequate when the foregoing constitutional principles are applied.

The affidavit is labeled "attachment 'C'" and consists of numbered paragraphs.

Paragraphs "1" and "2" simply identify the affiant, Gregory McClendon, an F.B.I. Agent, and set forth some statements about his four years experience.

Paragraph "3" merely says that he believes there is probable cause to search the locations and that the people named are involved in crime but, of course, is of no value in establishing probable cause.

Paragraph "4" simply lists locations and makes the bald assertion and conclusion that they are offices of "GDTS", which assertions and conclusions are worthless for probable cause purposes.

Paragraph "5" says that the affiant has been detailed to make the application for a search warrant for the premises and that his information is based upon his investigation and information provided to him by another federal agent and a state agent, without providing any specific facts as to who credibly provided what information.

Paragraph "6", after mentioning that GDTS (Georgia Disability Transportation Services) is a provider of non-

emergency transportation services for Medicaid recipients and was assigned certain numbers and information regarding policies and procedures. None of these assertions has any relationship to probable cause.

Paragraph "7" asserts that Everett McCrary was the owner of GDTS and on or about January 1, 1992, signed a provider agreement with the Georgia DMA to provide non-emergency transportation services for Medicaid recipients and was assigned certain numbers and information regarding policies and procedures. None of these assertions has any relationship to probable cause.

Paragraphs "8" and "9" assert the conclusion by the affiant as to details of how non-emergency transportation companies were supposed to transact their business.

In the first nine paragraphs of the affidavit the affiant has presented to the magistrate his subjective conclusions without any showing of facts of how any of this information would be within the officer's knowledge or, if from other sources, who furnished what fact and why such fact should be believed and why such source is credible. Through the first nine paragraphs, the magistrate has no basis for evaluation except the conclusions of the affiant, which, pursuant to the foregoing constitutional principles, is worthless for probable cause purposes.

In paragraph "10", the affiant says: "DMA records indicated that GDTS billed medicaid through its fiscal intermediary, EDS (Electronic Data Systems), . . . (then it sets forth various numerical calculations of alleged claims and payments)." Examination of the definition of "indicate" in Webster's Unabridged Dictionary reflects meanings of less than a full degree of certainty. In addition, the affiant provides the magistrate with no factual basis for determination by the magistrate of how the affiant knows this information and why the magistrate should believe that it is accurate. In regard to this paragraph, as with the foregoing

paragraphs, the magistrate is being asked to rely solely upon the assertions and conclusions of the affiant.

Paragraph "11" says that a named state agent advised the affiant that he mailed letters to numerous Medicaid recipients of services for whom GDTS had billed for Medicaid transportation; that numerous recipients responded that the mileage bill was inflated; that many trips were never made; and that the FBI investigation revealed that some trips were for non-medical reasons.

This paragraph consists of bald assertions and conclusions of the affiant. No particular facts are furnished to the magistrate upon which the magistrate could make an independent determination about the truth of what is said. The paragraph calls upon the magistrate to rely wholly upon the conclusions of the affiant. The paragraph utterly fails to provide answers to any of the following questions which the magistrate would be entitled to receive: To whom were letters mailed? How do you know that they were recipients of services by GDTS? How were the questions in the letters phrased? Who were the recipients who responded? What were the particular responses of the respondents? Which trips did the questions and responses relate to? Who said which trips were not made? How could the magistrate know that any of these comments were accurate? What FBI investigation was conducted that led to the conclusion set forth in this paragraph? Who did the investigation? What basis is there for the magistrate to credit any of these conclusions?

Paragraph "12" says that former drivers of GDTS were interviewed and stated that GDTS billed Medicaid for trips to non-medical destinations. Again, these are merely bald assertions and conclusions of the affiant and provide the magistrate with no credible factual basis to evaluate the truth of the statements, except to rely upon the conclusions of the affiant. The magistrate was not given the benefit of answers to the following questions: Who were the drivers interviewed? Were they motivated by threats of being prosecuted as

conspirators? What trips do they refer to? What basis is there to believe that the facts related are true and that the interviewee is credible?

Paragraph "13" provides nothing but bald assertions, conclusions and lack of factual evidence of reliability. The affiant asserts allegations from unnamed former employees to unnamed interviewees about alleged inadequate paperwork which was allegedly approved by Office Manager Tuggle, a Government witness. The affiant asserts that he drove some of the routes relating to questionable mileage claims and found that the mileage claimed by GDTS was inflated. The magistrate is deprived of answers to the following questions: Who were the former employees interviewed? When did they work? What were their duties? Why were these people to be believed? Who questioned Barbara Tuggle, whom the affiant said was office manager of GDTS, Macon? Why is the report of such a conversation to be believed? Was Barbara Tuggle threatened with prosecution as a conspirator? What trip sheets were furnished to the affiant? Which distances did the affiant travel? Which particular trip sheets reflect inflated mileage? There is no showing that any such exhibits were displayed to the magistrate. This paragraph, like the previous paragraphs, requires the magistrate to rely solely upon the conclusions of the affiant. Moreover, as now later revealed in the evidence, the Government agents had totally misunderstood the manner in which patients were transported and all measurements of distance were based on erroneous assumptions.

In paragraph "14" the affiant says: "On January 12, 1995, S/A Jack Wood, IRS, and myself conducted an interview with Barbara Tuggle, officer manager of GDTS, Macon, at the FBI Macon Resident Agency."

Based upon the assertions and conclusions of the affiant, it is obvious that Barbara Tuggle would have been a suspect. She was interviewed under intimidating circumstances in the FBI office and by two federal agents. No information is presented to the magistrate that would enable the magistrate

to assess how the intimidating psychodynamics might have affected Tuggle's truthfulness.

The affiant says that Tuggle asserted that ". . . The main principle individuals of GDTS were Mike Thornhill, Everett McCrary, Greg Starr, and Jackie Lloyd. McCrary signed the company checks as president, but it was her understanding that Mike Thornhill was the owner. Thornhill was convicted of state Medicaid fraud charges in 1991 in the State of Georgia, and sentenced in January, 1992 to five (5) years probation and restitution"

There is no factual showing to the magistrate of what Tuggle meant by "principal individuals." There is no evidence presented, and indeed there is none, that Michael Thornhill was an officer, a director, a stockholder or employee of GDTS. Neither does Tuggle say that Michael Thornhill was in any of those positions nor does other evidence provided to the magistrate show that he ever occupied any of those positions.

The assertion that Mr. Thornhill was convicted is a reckless misstatement of the facts. The truth, which is a matter of public record, is that he had formerly been in the emergency medical transportation business of both private paying clients and Medicaid recipients. He discontinued involvement in the transportation of Medicaid recipients when he entered a plea in Fulton Superior Court on January 6, 1992, where he took the responsibility for his corporation having been charged with incorrect categories of billing for emergency transportation of Medicaid patients. He completed the conditions of his probation and stands exonerated pursuant to O.C.G.A. 42-8-62, (App. 37) which provides that he is completely exonerated of any criminal purpose and that his civil liberties are not affected and that he shall not be considered to have a criminal conviction.

Obviously, even such a disposition could raise some suspicion in the mind of a magistrate. However, to assert to the magistrate that Mr. Thornhill had a conviction regarding

Medicaid claims, without explaining the context, was obviously designed to and, no doubt, did prejudice the magistrate.

The one credible factual matter that is presented in this paragraph is Government witness Tuggle's apparent admission that she instructed subordinates not to put the mileage in the blocks on the transportation billing sheet.

A further reckless misstatement of fact is the following statement: "During Tuggle's participation in this activity the faxed transportation billing sheets were received by Mike Thornhill's wife, Lamonica, on a daily basis at the GDTS facility in Lake City, Georgia." Out of context, this suggests the prejudicial idea to the magistrate that because of the suggested close relationship between Michael Thornhill and Lamonica Thornhill that Michael Thornhill was conversant with Lamonica's handling of billing sheets. The truth of the matter is that Michael Thornhill and Lamonica Thornhill were married in June, 1983, that they had separated in1988 and were divorced in 1993. During the entire time that the affidavit refers to there was not a close relationship between the two persons as suggested by the way that the affidavit is phrased.

The affiant further says that Ms. Tuggle stated that she was ordered by Everett McCrary not to put mileage in the blocks on the transportation billing sheet. There is no fact provided to show that this resulted in a later inaccurate entry or that a claim was made that was not based upon accurate information.

The affiant further says that leaving the block regarding mileage blank violated Medicaid regulations. There is no factual information furnished to the magistrate to demonstrate that such assertion is true. There is no indication that a regulation was exhibited to the magistrate or that someone who was shown to be qualified to give that opinion expressed the opinion. Again, the magistrate is asked here to rely solely upon the conclusion of the affiant.

The affiant next furnishes an assertion, with no support of its reliability, regarding an alleged three-way conversation among Tuggle and an alleged employee, Sharon (LNU), allegedly at the Lake City facility, and Melvin (LNU), allegedly manager of the GDTS office in Sandersville where Sharon allegedly told Tuggle and Melvin that GDTS inflates the mileage on all patients to 100 and 110 miles per trip. No facts are furnished to the magistrate as to why he can rely upon this statement by Tuggle regarding people who are supposed to be co-employees of hers and whose last names she does not even know. There is no showing that either Sharon (LNU) or Melvin (LNU) were ever interviewed or if any other efforts were made to corroborate the truth of this assertion by Tuggle.

The affiant goes on to say that Tuggle was aware of improprieties and instructed her employees to start recording actual patient mileage and to maintain separate records. There is no showing to the magistrate of any comparison between inconsistent records or what the factual particulars were supposed to be of improprieties or any basis to believe that anything Tuggle said was reliable except for the magistrate to rely upon the conclusions of the affiant.

Paragraph "15" doesn't really relate to probable cause but to locations of the offices which the affiant wanted to search.

Again, in this paragraph, the affiant makes a recklessly inaccurate statement regarding Michael Thornhill by again asserting that he was convicted.

Paragraph "16" simply asserts the affiant's conclusion regarding what records non-emergency transportation firms usually have.

Paragraph "17" states the affiant's conclusion that he has probable cause.

Paragraph "18" requests the search warrant for each of the stated locations.

Therefore, the entire affidavit was fatally infected with bald assertions, conclusions, speculations, prejudicial interpretations of ambiguous behavior, reckless inaccuracies, and utterly failed to provide the magistrate with substantial and credible facts within the officer's knowledge or of which he had reasonably trustworthy information which would cause a prudent person to believe, under the circumstances shown, that there was probable cause for the issuance of the search warrants. On the contrary, the entire affidavit simply begged for the magistrate to accept the conclusions of the affiant. Therefore, the affidavit was void under the constitutional principles set forth hereinabove. Therefore, all evidence, such as it was, seized as the result of the search warrants issued, based upon this affidavit, should have been suppressed as having been seized in violation of the Fourth Amendment of the Constitution of the United States.

III. CONCLUSION

This petition presents compelling reasons for the grant of the writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals has sanctioned such a departure by the United State District Court for the Middle District of Georgia from the accepted and usual course of judicial proceedings as to call for the just exercise of the Supreme Court's supervisory power to remedy the egregious Fifth and Sixth Amendment (App. 24) violations and defiance of the plain meaning of federal statutes below.

The Court of Appeals has sanctioned, without giving account for its reasoning, utter disregard for the Supreme Court's carefully formulated and venerable Fourth Amendment (App. 24) principle that the privacy and freedom of citizens shall not be violated by the authority of search warrants based upon unreliable conclusory affidavits.

Therefore, petitioners urge this Court to grant the writ of certiorari, for there is no other remedy for these injustices.

Respectfully submitted,

J. Melvin England
9040 Roswell Road, Suite 410
Atlanta, Georgia 30350-1863
(770) 641-6010
Counsel of Record for Petitioners

APPENDIX

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DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-12872

D.C. Docket No. 98-00056-CR-002-WD

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

EVERETT MCCRARY, MICHAEL THORNHILL,
Defendants-Appellants.

Appeal from the United States District Court for the
Middle District of Georgia

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
June 2, 2000
THOMAS K. KAHN
CLERK

Before BIRCH and BARKETT, Circuit Judges, and ALARCON*, Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R.36-1.[1]

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* Honorable Arthur L. Alarcon, Senior U.S. Circuit Judge for the Ninth Circuit, sitting by desgination.

[1] 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) the judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) a summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) the judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

5:98-cr-56 (WDO)

UNITED STATES OF AMERCIA,

vs.

MICHAEL THORNHILL, et al.,

Defendants.

Filed
Oct. 13, 1998
Deputy Clerk, U.S. District Court
Middle District of Georgia

ORDER

Before the court are defendants', Michael Thornhill, Everett McCrary, and LaMonica Thornhill, motions to suppress evidence obtained in searches pursuant to search warrants issued on February 2, 1995. A hearing was held on August 24, 1998 regarding these motions.

Probable Cause

The Fourth Amendment requires that a search warrant be issued only when there is probable cause to believe that an offense has been committed and that evidence of the offense exists at the place to be searched. U.S. v. Betancourt, 734 F.2d 750, 754 (11th Cir. 1984). A substantial basis for probable cause exists where the totality of the circumstances set forth in the affidavit provides sufficient information for a magistrate to determine that 'there is a fair probability that contraband or evidence of a crime will be found in a

particular place.'" U.S. v. Gonzalez, 940 F.2d 1413, 1419 (11th Cir. 1991), citing Illinois v. Gates, 462 U.S. 213, 238-39, 103 S.Ct. 2317, 1332-33, 76 L.Ed. 2d 527 (1983). Probable cause is often comprised of small details, each of which is insufficient, but together form a pattern that creates probable cause. Illinois v. Gates, 462 U.S. at 238. Absent arbitrariness, a magistrate's determination that probable cause exists is conclusive. Betancourt, at 754.

The Court finds that probable cause existed for the Magistrate Judge to issue the search warrants. At the time S/A McClendon applied for the search warrants at issue, he was a veteran FBI agent with over four years' experience and had been involved in investigating fraud in the health care industry for over two years. S/A McClendon worked closely with Investigator P. J. Kindle of the State of Georgia Department of Medical Assistance ("DMA"), S/A Jack Wood of the Internal Revenue Service's Criminal Investigation Division, and Barbara Tuggle, Office Manager of the GDTS Macon office. S/A McClendon took numerous actions to corroborate information given by his respective sources. For example, he sent letters to Medicaid recipients, personally drove and measured mileage, personally interviewed former drivers and personally visited each alleged GDTS site with a confidential witness in order to verify their existence as GDTS locations. Defendants argue that certain isolated facts asserted in the affidavit are not sufficient to constitute probable cause. However, the Court must look at the totality of the circumstances in order to determine whether probable cause existed. The Court finds that the warrants were based on sufficient supported facts to determine probable cause existed. Therefore, given the totality of the circumstances in this case, the warrants were properly issued.

Particularity

Elaborate specificity in a warrant is not necessary. A description is sufficiently particular when it enables a searcher to reasonably ascertain and identify the items authorized to be

seized. U.S. v. Peagler, 847 F.2d 756, 757 (11th Cir. 1988); U.S. v. Wuagneux, 683 F.2d 1343, 1349 (11th Cir. 1982).

The defendants argue that the warrants were general warrants which should be considered ineffective and overly broad. However, the warrants listed the types of items usually tainted in a fraud case or at least leading to relevant evidence. Although the items listed as proper subjects of seizure were extensive, such an extensive search is necessary in this type of fraud case. Because the business involved voluminous documents, computer files, etc., a search of these materials is essential to determine the proper scope of the case and also to discover all possible relevant information.

Execution

A search can be as extensive as reasonably required to locate the items sought in the warrant. U.S. v. Wuagneux, 683 F.2d at 1349. The reasonableness of the search depends on the complexity of the crime being investigated. U.S. v. Heldt, 668 F.2d 1238, 1257 (D.C. Cir. 1981).

The inventory return from the search clearly indicates that the search was not executed in an overly broad fashion. All of the evidence seized was either particularly described in the warrants or had a substantial nexus to the fraud investigation.

Conclusion

To summarize, the search warrants were valid. Each was supported by probable cause and adequately described the items to be seized. Furthermore, each was executed properly. All evidence seized was sufficiently described in the warrants. Accordingly, Michael Thornhill's motion to suppress [Tab #'s 86, 104], and LaMonica Thornhill's motion to suppress [Tab #95] are hereby **DENIED**.

SO ORDERED, this 13th day of October, 1998.

/s/ _____
WILBUR D. OWENS, JR.,
UNITED STATES DISTRICT JUDGE

JP:lab

United States District Court

FILED
U.S. DISTRICT COURT
M.D.GA.
99 AUG 10 PM 3:55
CLERK
DEPUTY CLERK

Middle District of Georgia

UNITED STATES OF AMERICA
V.

Michael Thornhill

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **5:98CR00056-001**

J. Melvin England
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) **1ss,2-43ss,44ss,45-52ss,53sss** after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. ' 371 icw42:1320	a-7b, 18:1341, 18:1343 - Conspiracy to commit fraud	07/02/1995	1ss
42 U.S.C. ' 1320 a-7b	False Statements Involving Federal Health Care Programs	07/02/1995	2-43ss
18 U.S.C. ' 1956 (h)	Conspiracy to Commit Money Laundering	07/02/1995	44ss
18 U.S.C. ' 1957 & 2	Engaging in monetary transactions in property derived from specified unlawful activity	07/02/1995	45-52ss

See Additional Counts of Conviction - Sheet 1.01

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 256-21-1364
Defendant's Date of Birth: 09/26/1961
Defendant's USM No.: 88579-020
Defendant's Residence Address:
10783 Rivertown Road
Fairburn GA 30260
Defendant's Mailing Address:
10783 Rivertown Road
Fairburn GA 30260

08/05/1999
Date of Imposition of Judgment

Signature of Judicial Officer

Wilbur D. Owens, Jr., Judge
U.S. District Court
Name & Title of Judicial Officer

August 10, 1999
Date

EXHIBIT A

DEFENDANT: Michael Thornhill

CASE NUMBER: 5:98CR00056-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 87 month(s).

Counts 1-43, 60 months imprisonment to run concurrently. Counts 44-52, 87 months to run concurrently w/Counts 1-43 for a total imprisonment of 87 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ a.m./p.m. on _____.
- ☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: Michael Thornhill
CASE NUMBER: 5:98CR00056-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 year(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Sheet 3.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Michael Thornhill

CASE NUMBER: 5:98CR00056-001

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a program approved by the U.S. Probation Office for substance abuse testing and, if necessary, treatment of alcohol/drug addiction or dependency.

You shall provide financial information to the Probation Officer upon request.

You shall not open any new lines of credit without prior appoval of the U.S. Probation Office.

Judgment-Sheet 3.01

DEFENDANT: Michael Thornhill

CASE NUMBER: 5:98CR00056-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 2,600.00	$	$ 1,063,258.17

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Georgia Department of Medical Assistance	$1,063,258.17	$1,063,258.17	
Totals:	$ 1,063,258.17	$ 1,063,258.17	

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

DEFENDANT: Michael Thornhill

CASE NUMBER: 5:98CR00056-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

☒ Joint and Several

Case Number (including Defendant Number)	Defendant Name	Joint and Several Amount
5:98-CR-56-002	Everett McCrary	$1,063,258.17
5:98-CR-56-005	Greg Starr	$1,153.30

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as directed by the court, the probation officer, or the United States attorney.

DEFENDANT: Michael Thornhill

CASE NUMBER: 5:98CR00056-001

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 27

Criminal History Category: I

Imprisonment Range: 70 to 87 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 12,500.00 to $ 3,467,144.92

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 1,063,258.17

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

United States District Court

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA
99 AUG 10 PM 3:55
CLERK
DEPUTY CLERK

Middle District of Georgia

UNITED STATES OF AMERICA
v.

Everett McCrary

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 5:98CR00056-002

J. Melvin England

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 1ss,2-43ss,44ss,45-52ss,53sss after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. ' 371 icw42:1320	a-7b, 18:1341 & 1343 - Conspiracy to commit fraud	02/07/1995	1ss
42 U.S.C. ' 1320 a-7b	False statements involving federal health care programs	02/07/1995	2-43ss
18 U.S.C. ' 1956 (h)	Conspiracy to commit money laundering	02/07/1995	44ss
18 U.S.C. ' 1957	Engaging in monetary transactions in property derived from specified unlawful activity	02/07/1995	45-52ss

See Additional Counts of Conviction - Sheet 1.01

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 259-08-0564
Defendant's Date of Birth: 03/31/1962
Defendant's USM No.: 88578-020
Defendant's Residence Address:
709 North Jefferson Street
Winchester TN 37398
Defendant's Mailing Address:
709 North Jefferson Street
Winchester TN 37398

08/05/1999
Date of Imposition of Judgment

Signature of Judicial Officer

Wilbur D. Owens, Jr., Judge
U.S. District Court
Name & Title of Judicial Officer

August 10, 1999
Date

EXHIBIT A

BEST AVAILABLE COPY

DEFENDANT: Everett McCrary

CASE NUMBER: 5:98CR00056-002

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. ' 982	Criminal Forfeiture	02/07/1995	53sss

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 72 month(s).

Counts 1-43ss, 60 months imprisonment to run concurrently. Counts 44-52ss, 72 months to run concurrently with Counts 1-43ss, for a total imprisonment of 72 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 year(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Sheet 3.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Everett McCrary

CASE NUMBER: 5:98CR00056-002

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a program approved by the U.S. Probation Office for substance abuse testing and, if necessary, treatment of alcohol/drug addiction or dependency.

You shall provide financial information to the probation officer upon request.

DEFENDANT: Everett McCrary

CASE NUMBER: 5:98CR00056-002

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 2,600.00	$	$ 1,063,258.17

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☒ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
Georgia Deparment of Medical Assistance	$1,063,258.17	$1,063,258.17	
Totals:	$ 1,063,258.17	$ 1,063,258.17	

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

DEFENDANT: Everett McCrary
CASE NUMBER: 5:98CR00056-002

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☐ in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

pecial instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several

Case Number (including Defendant Number)	Defendant Name	Joint and Several Amount
5:98-CR-56-002	Michael Thornhill	$1,063,258.17
5:98-CR-56-005	Greg Starr	$1,153.30

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

ıless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of ınment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility n. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made :ted by the court, the probation officer, or the United States attorney.

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

deline Range Determined by the Court:

Total Offense Level: 27

Criminal History Category: I

Imprisonment Range: 70 to 87 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 12,500.00 to $ 3,467,144.92

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ 1,063,258.17

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-12872-AA

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

EVERETT MCCRARY,
MICHAEL THORNHILL,
Defendants-Appellants.

On appeal from the United States District Court for the
Middle District of Georgia

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUG 25, 2000
THOMAS K. KAHN
CLERK

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC
(Opinion _____, 11th Cir., 19___, _____F.2d).

Before: BIRCH, BARKETT and ALARCON*, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the

Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/s/_____
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

*Honorable Arthur L. Alarcon, U.S. Judge for the Ninth Circuit, sitting by designation.

Fourth Amendment to the Constitution of the United States:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fifth Amendment to the Constitution of the United States:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service, in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Sixth Amendment to the Constitution of the United States:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

18 U.S.C. Sec. 1956. Laundering of monetary instruments

- (a)
  - (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity -
  - (A)
    - (i) with the intent to promote the carrying on of specified unlawful activity; or
    - (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
  - (B) knowing that the transaction is designed in whole or in part -
    - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    - (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.
  - (2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the

United States or to a place in the United States from or through a place outside the United States -

- (A) with the intent to promote the carrying on of specified unlawful activity; or

- (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part -

    - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

    - (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

- (3) Whoever, with the intent -

- (A) to promote the carrying on of specified unlawful activity;

- (B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

- (C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

- (b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of -

  - (1) the value of the property, funds, or monetary instruments involved in the transaction; or

  - (2) $10,000.

- (c) As used in this section -

  - (1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

- (2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

- (3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

- (4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce

    - (i) involving the movement of funds by wire or other means or

    - (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

- (5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

- (6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

- (7) the term "specified unlawful activity" means -

- (A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

- (B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving -

    - (i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

    - (ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire; [1]

    - (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978);

- (C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

- (D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring

a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section

1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),, [2] section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,

- (E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

- (F) Any [3] act or activity constituting an offense involving a Federal health care offense. [3] So in original. Probably should not be capitalized.

- (8) the term "State" includes a State of the United States, the District of Columbia, and any

commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if -

- (1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) Notice of Conviction of Financial Institutions. - If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of

this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

- (h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. Sec. 1957. Engaging in monetary transactions in property derived from specified unlawful activity

- (a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

- (b)

  - (1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

  - (2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

- (c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

- (d) The circumstances referred to in subsection (a) are -

  - (1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

  - (2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a

United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.

(f) As used in this section -

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term "criminally derived property" means any property constituting, or derived

from, proceeds obtained from a criminal offense; and

- (3) the term "specified unlawful activity" has the meaning given that term in section 1956 of this title.

CODE OF GEORGIA

TITLE 42. PENAL INSTITUTIONS

CHAPTER 8. PROBATION

ARTICLE 3. PROBATION OF FIRST OFFENDERS

Current through 2000 Legislation

O.C.G.A. 42-8-62 Discharge of defendant without adjudication of guilt.

(a) Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. The discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. It shall be the duty of the clerk of court to enter on the criminal docket and all other records of the court pertaining thereto the following:

"Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62."

Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer print-outs, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this subsection shall not be

altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge.

(b) Should a person be placed under probation or in confinement under this article, a record of the same shall be forwarded to the Georgia Crime Information Center. Without request of the defendant a record of discharge and exoneration, as provided in this Code section, shall in every case be forwarded to the Georgia Crime Information Center. In every case in which the record of probation or confinement shall have been previously forwarded to the Department of Corrections, to the Georgia Crime Information Center, and to the Identification Division of the Federal Bureau of Investigation and a record of a subsequent discharge and exoneration of the defendant has not been forwarded as provided in this Code section, upon request of the defendant or his attorney or representative, the record of the same shall be forwarded by the clerk of court so as to reflect the discharge and exoneration.

CODE OF GEORGIA

TITLE 42. PENAL INSTITUTIONS

CHAPTER 8. PROBATION

ARTICLE 3. PROBATION OF FIRST OFFENDERS

Current through 2000 Legislation

O.C.G.A. 42-8-65 Use of prior finding of guilt in subsequent prosecutions; release of records of discharge; modification of records to reflect conviction; effect of confinement sentence where guilt not adjudicated.

(a) If otherwise allowable by law in any subsequent prosecution of the defendant for any other offense, a prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted pursuant to this article.

(b) The records of the Georgia Crime Information Center shall be modified, without a court order, to show a conviction in lieu of treatment as a first offender under this article whenever the conviction of a person for another crime during the term of probation is reported to the Georgia Crime Information Center. If a report is made showing that such person has been afforded first offender treatment under this article on more than one occasion, the Georgia Crime Information Center may report information on first offender treatments subsequent to the first such first offender treatment as if they were convictions. Such records may be disseminated by the Georgia Crime Information Center in the same manner and subject to the same restrictions as any other records of convictions.

(c) Notwithstanding any other provision of this article, any person who is sentenced to a term of confinement pursuant to paragraph (2) of subsection (a) of > Code Section

42-8-60 shall be deemed to have been convicted of the offense during such term of confinement for all purposes except that records thereof shall be treated as any other records of first offenders under this article and except that such presumption shall not continue after completion of such person's confinement sentence. Upon completion of the confinement sentence, such person shall be treated in the same manner and the procedures to be followed by the court shall be the same as in the case of a person placed on probation under this article.